Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

Case No. 80-408

IN THE SUPREME COURT OF THE UNITED STATES

1980 OCTOBER TERM

WILBUR C. BAKER and wife,
ANNIE JO BAKER,

Petitioners,

vs

THE UNITED STATES
OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL APPENDIX

W. Paul Thompson
Thompson, Adkinson & Beasley
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APPENDIX

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, D.C. 20324

5 DEC 1977

Mr. Clayton J. M. Adkinson
Thompson, Adkinson & Beasley
P. O. Drawer 608
DeFuniak Springs, FL 32433

Re: Claim of Wilbur C. Baker

Dear Mr. Adkinson

The claim for personal injury and property damage of your client, Wilbur C. Baker, stemming from a motor vehicle accident in which Mr. Baker drove his vehicle in reverse into a ditch along Range Road 400, Eglin Air Force Base, Florida, on 27 September 1975, has been considered under the provisions of 28 U.S.C. 2671-2680. After a thorough review of the facts and investigation of the accident, your client's claim has been approved in the amount of $100,000.00.

We believe this sum represents reasonable compensation for your client's personal injuries, in consideration of Florida "pure" comparative negligence doctrine. Assuming arguendo that the Air Force was negligent in failing to properly maintain Range Road 400, there is no question that Mr. Baker's injuries could easily have been avoided had he exercised due care in turning his vehicle around. On the contrary, the facts indicate, and are confirmed

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC. 20324

9 FEB 1978

Mr. Clayton J. M. Adkinson
Thompson, Adkinson & Beasley
P.O. Drawer 608
DeFuniak Springs, FL 32433

Re: Claim of Wilbur C. Baker

Dear Mr. Adkinson

We have reviewed Mr. Baker's offer to settle his claim for $750,000.00 as stated in your letter of 19 December 1977.

After another complete analysis of all the facts, including your Fact Sheet contained in your letter as Attachment A, and the applicable law, we are unable to offer Mr. Baker such a settlement. Assuming arguendo that the Air Force was negligent in either not closing Range Road 400 to traffic or clearing the accumulated water off the roadway, it must be concluded that Mr. Baker was negligent in the operation of his van. Thus, any negligence of the Air Force must be compared with the negligence of Mr. Baker. It is apparent that Mr. Baker's injuries could have been avoided had he operated his van in a prudent manner. Therefore, we believe the primary responsibility for this incident lies with Mr. Baker.

EXHIBIT "B"

by the testimony of Florida Highway Patrolman James L. Fulford and Staff Sergeant Joel Bailey, Mr. Baker did not exercise due care in turning his vehicle around. Both indicate that their observations at the scene of the accident indicate that Mr. Baker drove his vehicle in reverse at an excessive speed, causing him to lose control and back into the drainage ditch.

If Mr. Baker wishes to accept this amount, please have him execute three copies of the attached settlement agreement and return them to the Chief, Claims and Tort Litigation Staff (Stop 324), Office of The Judge Advocate General, 1900 Half Street S.W., Washington, D.C. 20324. This office will then present the settlement agreement to the Attorney General and, if approved by him, the Treasury Department will issue you a check on behalf of your client.

If you have any questions regarding this settlement offer, please do not hesitate to contact this office. The staff attorney assigned to this case is Captain Mark S. Anderson, who may be reached at (202) 693-1073.

Sincerely

Signed

V. A. JORDAN, Colonel, USAF
Director of Civil Law
Office of The Judge Advocate General

1 Atch
Settlement Agreement
(4 Cys)

Despite this, we have increased our offer in this matter to $150,000.00. If Mr. Baker wishes to accept this amount, please assist him in executing three copies of the enclosed settlement agreement and return them to: Chief, Claims and Tort Litigation Staff, Office of The Judge Advocate General, HQ USAF/JACC, Washington, D.C. 20324. This office will then present the settlement agreement to the Attorney General of the United States; and if approved by him, the Treasury Department will issue you a check on behalf of your client. If Mr. Baker is not satisfied with this decision, he may file a lawsuit in an appropriate United States District Court not later than six months from the mailing of this notification.

Sincerely

Signed

LARRY W. SHREVE, Colonel, USAF
Chief, Claims and Tort Litigation Staff
Office of The Judge Advocate General

Atch
Settlement Agreement
(x 4)

Judgment on Decision by the Court CIV 32 (7-63)

United States District Court
FOR THE
Northern District of Florida
Pensacola Division
Civil Action File No. PCA 78-0434

WILBUR C. BAKER,

vs. JUDGMENT

THE UNITED STATES OF AMERICA,

This action came on for (hearing) before the Court, Honorable Winston E. Arnow, Chief , United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered.

It is Ordered and Adjudged that the plaintiff take nothing, that the action be dismissed with prejudice and that the defendant, The United States of America, recover of the plaintiff, Wilbur C. Baker, its costs of action.

Dated at Pensacola, Florida , this 3rd day of October , 1978.

MARVIN S. WAITS
Clerk of Court

Signed By: Bruce Meredith
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

WILBUR C. BAKER,

Plaintiff,

v. PCA 78-0434

THE UNITED STATES OF AMERICA,

Defendant.

ORDER

In accordance with memorandum decision of this date, it is ORDERED:

1. Motion of defendant United States of America for summary judgment is hereby granted.

2. The Clerk of this Court will enter judgment in favor of defendant, dismissing this action with prejudice and at plaintiff's cost.

DONE and ORDERED this 3 day of October, 1978.

Signed WINSTON E. ARNOW, Chief Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

WILBUR C. BAKER,

Plaintiff,

v. PCA 78-0434

THE UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM DECISION

Before the court is motion of defendant for summary judgment.

The basic facts are not in dispute. Plaintiff Wilbur C. Baker with his two sons was traveling on a range road through a portion of Eglin Air Force Base Reservation which was open to the public for outdoor recreational purposes. A hurricane had passed through the area several days before leaving water standing on the road at one point. Defendant had dug a ditch alongside the road in an effort to drain the water off. When plaintiff reached this point he saw both the standing water and the ditch. He decided not to drive through the water but to back up the road past the end of the ditch and turn around. In attempting to do so, he somehow backed into the ditch and was injured. There were no signs along the road warning of any dangerous condition.

In this case the parties are apparently in agreement and the court concurs that plaintiff's status was that of a public invitee. **Post v. Lunney,** 261 So. 2d 146 (Fla. 1972); **Wood v. Camp,** 284 So. 2d 691 (Fla. 1973). As such, defendant was not liable to him for injury caused by a condition of the land which was known and obvious to him unless defendant should have anticipated the harm despite the plaintiff's knowledge and the obviousness of the danger. **Restatement of Torts** 2d §343A; 23 **Fla. Jur. Negligence** §45.

In this case the testimony is uncontradicted that the water standing on the road and the ditch alongside it were open and obvious conditions and plaintiff himself testified he was aware of both conditions. There is nothing to indicate defendant could have anticipated plaintiff's actions or the resulting harm to him. There is not here involved a question of assumption of risk or comparative negligence which depend upon pre-existing negligence of defendant. Rather, the facts here present a case in which no negligence on the part of defendant is shown and plaintiff's own negligence was the sole legal cause of his injuries.

In his letter memo plaintiff contends the patent danger doctrine has been absorbed into the doctrine of contributory negligence. However, the doctrine referred to in the case cited, **Blaw-Knox Food & Chemical Equipment Co. v. Holmes,** 348 So. 2d 604 (Fla. App. 1977) involves products liability. That doctrine was to the effect that a manufacturer is under no duty to render an article or machine "more safe" if the danger to be avoided is open and obvious to all. In that situation, the court in **Blaw-Knox** held the doctrine was merged in the defense of

contributory negligence and the principles of comparative negligence. No case has been cited to, or found by, the court to change the principles respecting liability of a landowner to an invitee in a situation involving an open and obvious condition existing on land. If such principles are to be changed, it is not for this court to do so. Moreover, as previously pointed out, plaintiff's own negligence was the sole legal cause of his injuries.

In view of the foregoing the court finds there is no genuine issue of material fact and defendant is entitled to a judgment as a matter of law.

In view of the foregoing, the court concludes it unnecessary to consider the applicability of F.S. §375.251 to the situation here involved.

Order will be entered granting motion for summary judgment and directing entry by the Clerk of judgment in defendant's favor dismissing this action with prejudice and at plaintiff's cost.

DATED this 3rd day of October, 1978.

Signed Winston E. Arnow
Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 78-3679

WILBUR C. BAKER and wife, ANNIE JO BAKER,

Plaintiffs-Appellants,

versus

THE UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Florida

(MAY 1, 1980)

Before FAY, KRAVITCH and RANDALL, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

[1] SEE N.L.R.B. v. Amalgamated Clothing Workers of America, 1970, 430 F.2d 966.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 78-3679

WILBUR C. BAKER and wife,
ANNIE JO BAKER,

Plaintiffs-Appellants,

versus

THE UNITED STATES OF AMERICA,

Defendant-Appellee.

— — — — —

Appeal from the United States District Court for the Northern District of Florida

— — — — —

ON PETITION FOR REHEARING

(June 20, 1980)

Before FAY, KRAVITCH and RANDALL, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

Signed Phyllis Kravitch
United States Circuit Judge

Form 703-2

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of September, 1980, mailed, by certified mail, return receipt requested, postage prepaid, forty copies of the foregoing Supplemental Appendix to the Clerk, United States Supreme Court, First and Maryland Avenue, N.E., Washington, D.C. 20543; three copies to Nicholas P. Geeker, Esq., Attorney for Respondent, P.O. Box 12313, Pensacola, Florida 32581; and three copies to the Solicitor General, Department of Justice, Washington, D.C. 20530. I further certify that the foregoing parties are all of the necessary parties required to be served in this matter, and that the same has been timely filed.

W. Paul Thompson
Attorney for Petitioners

Sworn to and subscribed before me
this 26th day of September, 1980.

Sarah M. Frazier
Notary Public, State of Florida at Large

My commission expires: 9-12-81